

CARL OBERG

IBLA 80-289

Decided April 4, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned and void. CA MC 60450.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under 43 CFR 3833.1-2 the owner of an unpatented mining claim, millsite or tunnel site located on or before Oct. 21, 1976, must file (file shall mean being received and date stamped by the proper BLM office) an official copy of the notice of location with the proper BLM office on or before Oct. 22, 1979, or the claim will be conclusively deemed to have been abandoned under 43 CFR 3833.4. Mining claimants are not relieved of the requirement to file timely their documents when they mail them, as the documents cannot be considered as filed until they are received by the proper office of the Bureau of Land Management.

APPEARANCES: Donald P. Gudin, Esq., of Donald P. Gudin, Inc., Attorney for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated December 26, 1979, of the California State Office, Bureau of Land Management (BLM), declaring Flora "D" lode mining claim abandoned and void for failure to timely file a copy of the official record of the notice of location, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation, 43 CFR 3833.1-2.

Flora D mining claim was located on November 10, 1947. Under 43 CFR 3833.1-2, 1/ a copy of the official record of the notice of location for the claim was required to be filed with BLM on or before October 22, 1979. The copy for appellant's claim was received for recording by BLM on October 24, 1979. The decision appealed from states, "Your location notice \* \* \* was not filed on or before October 22, 1979" (emphasis added).

[1] The provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) (1976), and the pertinent regulations, 43 CFR 3833.1-2(a), require that the owner of an unpatented mining claim located prior to October 21, 1976, file with the proper BLM office an official location notice of said claim on or before October 22, 1979. Failure to file the required instrument is deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. 1744(c) (1976), 43 CFR 3833.4.

FLPMA and its implementing regulations mandate the consequences of failure to file. This Board has repeatedly held that when the recordation requirements are not met the mining claims must be deemed abandoned and void. Charles and Pete Caress, 41 IBLA 302 (1979); Nuclear Power and Energy Co., 41 IBLA 142 (1979); Al Sherman, 38 IBLA 300 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978).

In his statement of reasons, appellant seeks to justify his late filing by asserting that he mailed the appropriate documents on October 20, 1979, which should have allowed enough time for the documents to arrive at BLM before October 22. Appellant further states "that apparently the documents were unduly delayed in the U.S. mail or were not received in the proper place at the Bureau of Land Management through no fault of his."

Appellant's argument cannot be accepted on this appeal. Since appellant chose the method of mailing he must bear the consequences of such a choice. Mobil Oil Corp., 35 IBLA 265 (1978); Donald E. Jordan (Supp.), 41 IBLA 60 (1979). Furthermore, filing is accomplished only when a document is delivered to and received by the proper BLM office. As stated in H. P. Saunders, Jr., 59 I.D. 41, 42-43 (1945):

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1/ 43 CFR 3833.1-2 provides in pertinent part:

"(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law \* \* \*."

Filing, it must be observed, is not complete until the document is delivered and received. "Shall file" means to deliver to the office and not send through the United States mails. \* \* \* A paper is filed when it is delivered to the proper official and by him received and filed. United States v. Lombardo, 241 U.S. 73, 76 (1916); Poynor v. Commissioner of Internal Revenue, 81 F. (2d) 521, 522 (C.C.A. 5th, 1936); Weaver v. United States, 72 F. (2d) 20, 21 (C.C.A. 4th, 1934); Tyson v. United States, 76 F. (2d) 553, 534 (C.C.A. 4th, 1935); Wampler v. Snyder, 66 F. (2d) 195, 196 (App. D.C., 1933); Stebbins' Estate v. Helvering, 74 App. D.C. 21, 121 F. (2d) 892, 894 (1941); Creasy v. United States, 4 F. Supp. 175, 177-178 (D.C.W.D.Va., 1933). Even if, as claimed by Saunders, the letter, in the usual course of the mails, should have reached the register at Las Cruces prior to the expiration of the lease, the fact nevertheless remains that the applications were not filed on time, for a paper is considered filed only at the time when it is actually delivered to and received by the office concerned, not when it could have reached that office in the regular course of the mails. Poynor v. Commissioner of Internal Revenue, *supra*; Weaver v. United States, *supra*. It is thus immaterial whether or not there was any unusual delay in the delivery of the letter and whether or not the post office was "negligent." [Footnote omitted.]

Cf. Mar-Win Development Co., 20 IBLA 383 (1975). Accordingly since the documents were not timely filed, BLM properly declared the claim abandoned and void.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joseph W. Goss  
Administrative Judge

